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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

In re QUALITY SYSTEMS, INC.
SECURITIES LITIGATION

No. 8:13-cv-01818-CJC-JPR

CLASS ACTION

This Document Relates To:

ALL ACTIONS.

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
LEAD PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF
SETTLEMENT AND APPROVAL OF
PLAN OF ALLOCATION

DATE: November 19, 2018
TIME: 1:30 p.m.
CTRM: 7C
JUDGE: Honorable Cormac J. Carnev

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1 **I. PRELIMINARY STATEMENT**

2 Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead
 3 Plaintiffs City of Miami Fire Fighters’ and Police Officers’ Retirement Trust
 4 (“Miami”) and Arkansas Teacher Retirement System (“ATRS”) (collectively,
 5 “Lead Plaintiffs”) submit this memorandum in support of their motion for: (a) final
 6 approval of the Settlement of this securities class action for \$19 million in cash,
 7 and (b) approval of the Plan of Allocation. The terms of the Settlement are set
 8 forth in the Stipulation of Settlement, dated July 16, 2018 (“Stipulation”), which
 9 was previously filed with the Court.¹ ECF No. 95-2.

10 This Settlement represents a very good recovery for the Class, particularly in
 11 light of Quality Systems, Inc.’s (“QSI” or the “Company”) petition for a writ of
 12 certiorari pending before the United States Supreme Court and the considerable
 13 expense, delay, and risks posed by continued litigation, including obtaining class
 14 certification, successfully opposing summary judgment, prevailing at trial, and
 15 litigating inevitable post-trial motions and appeals. As discussed below and in the
 16 accompanying Joint Declaration of Robert R. Henssler Jr. and Benjamin Galdston in
 17 Support of: (A) Lead Plaintiffs’ Motion for Final Approval of Settlement and
 18 Approval of Plan of Allocation, and (B) Lead Counsel’s Motion for an Award of
 19 Attorneys’ Fees and Expenses and Award to Lead Plaintiffs Pursuant to 15 U.S.C.
 20 §78u-4(a)(4) (“Joint Decl.”), this Litigation has been aggressively litigated for more
 21 than four years, including a successful appeal to the United States Court of Appeals
 22 for the Ninth Circuit.

23 Among other things, Lead Counsel conducted a thorough investigation and
 24 drafted a detailed 76-page Amended Complaint, opposed Defendants’ motion to
 25 dismiss the Amended Complaint and sought reconsideration of the dismissal,
 26 successfully appealed the dismissal to the Ninth Circuit, zealously sought to have

27 ¹ All capitalized terms not defined herein shall have the same meanings set
 28 forth in the Stipulation.

1 relevant state court records unsealed, pursued and negotiated discovery leading to
 2 the production of over 350,000 pages of documents by Defendants and non-parties,
 3 litigated two hard-fought discovery disputes, fully briefed Defendants' petition for a
 4 writ of certiorari, and mediated a resolution of the case with the assistance of
 5 Gregory P. Lindstrom, Esq., of Phillips ADR, a respected and experienced mediator.
 6 *See generally* Joint Decl. Therefore, Lead Plaintiffs and Lead Counsel were well
 7 informed about the strengths and weaknesses of their case when they agreed to settle
 8 this action for \$19 million. Indeed, the significant risks involved in taking this
 9 Litigation further and through trial, when measured against the immediate benefit of
 10 the Settlement, justify approval of this Settlement.²

11 The Settlement is also fully supported by the Lead Plaintiffs, who are large,
 12 sophisticated institutional investors of the type favored by Congress when passing
 13 the Private Securities Litigation Reform Act of 1995 ("PSLRA"). Lead Plaintiffs
 14 have closely monitored and participated in this Litigation, including engaging with
 15 Lead Counsel regarding the Litigation strategy, reviewing correspondence and court
 16 filings, and identifying and providing relevant information during discovery, and
 17 recommend that the Settlement be approved. *See* accompanying Declaration of
 18 Ornel N. Cotera in Support of: (A) Lead Plaintiffs' Motion for Final Approval of
 19 Settlement; and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and
 20 Expenses ("Cotera Decl."), ¶¶2-4; Declaration of Arkansas Teacher Retirement
 21 Systems in Support of (A) Lead Plaintiffs' Motion for Final Approval of
 22 Settlement; (B) Lead Counsel's Motion for an Award of Attorneys' Fees and
 23 Reimbursement of Litigation Expenses; and (C) Lead Plaintiff Award ("ATRS
 24 Decl."), ¶¶2-4. Further, Lead Counsel, comprised of firms with extensive
 25 experience in prosecuting complex securities class actions, believes that the

26 _____
 27 ² This Court's July 30, 2018 Order Granting Preliminary Approval of Class
 28 Action Settlement and Lifting Stay (the "Notice Order") (ECF No. 96) held that
 "the benefits provided to the proposed settlement class appropriately balance the
 risks of continued litigation." *Id.* at 11.

1 Settlement is a very good result and in the best interests of the Class. Joint Decl.,
 2 ¶¶6, 97, 100.

3 The Notice Order directed that a final approval hearing be held on
 4 November 19, 2018. In accordance with the Notice Order, the Notice of
 5 (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and
 6 (III) Motion for Attorneys' Fees and Expenses (the "Notice") and the Proof of Claim
 7 and Release Form ("Proof of Claim") were mailed to all Class Members who could
 8 be identified with reasonable effort, and as of October 12, 2018, over 61,200 copies
 9 have been mailed. See Declaration of Eric J. Miller Regarding Notice
 10 Dissemination, Publication, and Report on Requests for Exclusion Received to Date
 11 ("Miller Decl."), ¶¶3-9, submitted herewith. In addition, the Notice, the Proof of
 12 Claim, the Stipulation and its Exhibits, the Notice Order, and other documents
 13 related to the Litigation were posted on the Settlement website, and pursuant to the
 14 Notice Order, a Summary Notice was published in the national edition of *The Wall*
 15 *Street Journal* and over the *PR Newswire* on August 14, 2018. *Id.*, ¶¶10, 12.

16 Class Members appear to support the Settlement and Plan of Allocation.
 17 While the deadline for objecting is October 29, 2018, to date, not a single Class
 18 Member has objected to any aspect of the Settlement or Plan of Allocation.³ Nor
 19 has any Class Member sought exclusion from the Class.

20 In light of their informed assessment of the strengths and weaknesses of the
 21 claims and defenses asserted, the considerable risks and delay associated with
 22 continued litigation and trial, and the favorable Settlement Amount, Lead Plaintiffs
 23 and Lead Counsel believe that the Settlement is eminently fair, reasonable, and
 24 adequate and provides a very good result for the Class. Accordingly, Lead
 25 Plaintiffs respectfully request that the Court approve this Settlement. Moreover,
 26 the Plan of Allocation, which was developed with the assistance of Lead Plaintiffs'

27 ³
 28 Should any objections be received, Lead Plaintiffs will address them in their
 reply memorandum on or before November 12, 2018.

1 damages expert, is fair and reasonable and, therefore, should also be approved by
2 the Court.

3 **II. PROCEDURAL AND FACTUAL BACKGROUND**

4 The following is a brief overview of the Litigation.⁴ The initial complaint
5 was filed on November 19, 2013, in the United States District Court for the Central
6 District of California. On February 4, 2014, the Court appointed Miami and ATRS
7 as Lead Plaintiffs, and Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) and
8 Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz”) as Lead
9 Counsel. ECF No. 22. On April 7, 2014, Lead Plaintiffs filed the Amended
10 Complaint for Violations of the Federal Securities Laws (the “Amended
11 Complaint”), alleging violations of Sections 10(b) and 20(a) of the Securities
12 Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder,
13 in connection with certain statements regarding, among other things, QSI’s sales
14 and financial performance during the Class Period. ECF No. 26.

15 On June 20, 2014, Defendants filed their motion to dismiss the Amended
16 Complaint. ECF No. 29. On October 20, 2014, after being fully briefed and
17 argued, the Court granted Defendants’ motion to dismiss, with prejudice. ECF No.
18 39. Lead Plaintiffs timely sought reconsideration, which the Court denied on
19 January 5, 2015. ECF No. 46.

20 On January 30, 2015, Lead Plaintiffs filed their Notice of Appeal with the
21 United States Court of Appeals for the Ninth Circuit. ECF No. 47. With the
22 appeal ongoing, Lead Plaintiffs filed a motion to unseal documents and
23 information in the Hussein Litigation pending in California state court on
24 September 2, 2016. On October 11, 2016, following full briefing and argument,
25 the California state court denied Lead Plaintiffs’ motion.

26
27 ⁴ The Court is respectfully referred to the Joint Declaration for a more detailed
28 description of the Litigation, Lead Counsel’s efforts on behalf of the Class, the
risks of further litigation, and the substantial benefits obtained by this Settlement.

1 On July 28, 2017, after Lead Plaintiffs' appeal was fully briefed and argued,
2 the Ninth Circuit issued its opinion reversing the District Court's dismissal of the
3 Amended Complaint and remanding the case. *In re Quality Sys., Inc. Sec. Litig.*,
4 865 F.3d 1130 (9th Cir. 2017). Defendants filed a petition for rehearing *en banc*,
5 which the Ninth Circuit denied on September 29, 2017. The Ninth Circuit issued
6 its formal mandate to the District Court on October 10, 2017.

7 On October 19, 2017, Lead Plaintiffs served their First Request for
8 Production of Documents to Defendants, containing 33 requests. Between
9 October 25, 2017 and December 8, 2017, Lead Plaintiffs also served 32 subpoenas
10 to non-parties.⁵ Lead Plaintiffs served their first requests for admission to all
11 Defendants, consisting of 21 requests, on March 23, 2018.

12 On January 26, 2018, Defendants filed their petition for a writ of certiorari
13 with the U.S. Supreme Court, seeking reversal of the Ninth Circuit's opinion.
14 Lead Plaintiffs filed their opposition to the writ petition on March 22, 2018. On
15 April 10, 2018, Defendants filed their reply in support of their writ petition.

16 On May 9, 2018, the parties participated in a full-day, in-person mediation
17 with Gregory P. Lindstrom, Esq., of Phillips ADR. The next day, the parties
18 accepted a double-blind mediator's recommendation and reached an agreement-in-
19 principle to settle the case. Subsequently, the parties continued negotiations
20 resulting in the terms and conditions set forth in the Stipulation. ECF No. 95-2.
21 Lead Plaintiffs moved for preliminary approval of the Settlement, as well as class
22 certification for settlement purposes and approval of class notice, on July 16, 2018.
23 ECF No. 95. The Court entered the Notice Order on July 30, 2018. ECF No. 96.

24
25
26
27 ⁵ Lead Plaintiffs subpoenaed five additional non-parties between January 29,
28 2018 and April 30, 2018.

1 **III. THE STANDARDS GOVERNING JUDICIAL APPROVAL OF**
2 **CLASS ACTION SETTLEMENTS**⁶

3 It is well-established in the Ninth Circuit that “voluntary conciliation and
4 settlement are the preferred means of dispute resolution.” *Officers for Justice v.*
5 *Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). Class actions in particular
6 readily lend themselves to compromise because of the difficulties of proof, the
7 uncertainties of the outcome, and the complexity and typical length of the litigation.
8 Indeed, the Ninth Circuit has recognized that “[w]hen reviewing complex class
9 action settlements, we have a ‘strong judicial policy that favors settlements.’” *In re*
10 *Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995) (quoting *Class Plaintiffs v.*
11 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)); *see also In re Omnivision Techs.*, 559
12 F. Supp. 2d 1036, 1041 (N.D. Cal. 2007) (“[T]he court must also be mindful of the
13 Ninth Circuit’s policy favoring settlement, particularly in class action law suits.”).⁷
14 It is also beyond question that “the public has an overriding interest in securing ‘the
15 just, speedy, and inexpensive determination of every action.’” *In re*
16 *Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1227 (9th Cir.
17 2006); Fed. R. Civ. P. 1. And this too is particularly true in class action lawsuits.
18 *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

19 In deciding whether to approve a proposed settlement of a class action, the
20 court must find that the proposed settlement is “fair, reasonable, and adequate.”
21 Fed. R. Civ. P. 23(e). *See also Pac. Enters.*, 47 F.3d at 377; *Officers for Justice*,
22 688 F.2d at 625; *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir.
23 1977). The Ninth Circuit has provided certain factors which may be considered in
24 evaluating whether a settlement meets this standard:

25 ⁶ The Notice Order contained a full analysis of the Rule 23(a) and
26 Rule 23(b)(3) requirements for class certification, and found that each of the
27 required elements were met. There have been no circumstances or events to
undermine those findings; therefore, the Court is requested to incorporate those
findings and finally certify the Class for settlement purposes.

28 ⁷ Citations are omitted throughout unless otherwise indicated.

1 The district court's ultimate determination will necessarily involve a
2 balancing of several factors which may include, among others, some
3 or all of the following: the strength of plaintiffs' case; the risk,
4 expense, complexity, and likely duration of further litigation; the risk
5 of maintaining class action status throughout the trial; the amount
6 offered in settlement; the extent of discovery completed, and the stage
7 of the proceedings; the experience and views of counsel; the presence
8 of a governmental participant; and the reaction of the class members
9 to the proposed settlement.

10 *Officers for Justice*, 688 F.2d at 625; *accord Torrissi v. Tucson Elec. Power Co.*, 8
11 F.3d 1370, 1375 (9th Cir. 1993). "The relative degree of importance to be attached
12 to any particular factor will depend upon . . . the nature of the claims advanced, the
13 types of relief sought, and the unique facts and circumstances presented by each
14 individual case." *Officers for Justice*, 688 F.2d at 625.

15 Approval of a class action settlement "is left to the sound discretion of the
16 trial judge," and approval "will be reversed only for abuse of that discretion." *Ellis*
17 *v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d
18 939 (9th Cir. 1981); *accord Torrissi*, 8 F.3d at 1375. At the same time, the Ninth
19 Circuit provides guidance as to the limits of the inquiry to be made by the court:

20 [T]he settlement or fairness hearing is not to be turned into a trial or
21 rehearsal for trial on the merits. Neither the trial court nor this court is
22 to reach any ultimate conclusions on the contested issues of fact and
23 law which underlie the merits of the dispute, for it is the very
24 uncertainty of outcome in litigation and avoidance of wasteful and
25 expensive litigation that induce consensual settlements. The proposed
26 settlement is not to be judged against a hypothetical or speculative
27 measure of what *might* have been achieved by the negotiators.

28 *Officers for Justice*, 688 F.2d at 625 (emphasis in original). In sum, the Ninth
Circuit "has long deferred to the private consensual decision of the parties."
Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 965 (9th Cir. 2009).

Taking these policies into consideration, courts have taken a flexible
approach toward approval of class action settlements, recognizing that the
settlement process involves the exercise of judgment and that the concept of

1 “reasonableness” can encompass a broad range of results. ““In most situations,
2 unless the settlement is clearly inadequate, its acceptance and approval are
3 preferable to lengthy and expensive litigation with uncertain results.”” *Nat’l Rural*
4 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004). “As
5 the Ninth Circuit has noted, ‘Settlement is the offspring of compromise; the
6 question . . . is not whether the final product could be prettier, smarter, or snazzier,
7 but whether it is fair, adequate, and free from collusion.’” *In re Wells Fargo Loan*
8 *Processor Overtime Pay Litig.*, 2011 WL 3352460, at *4 (N.D. Cal. Aug. 2, 2011)
9 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026-27 (9th Cir. 1998)).

10 When examined under the applicable criteria, this Settlement is a very good
11 result for the Class, particularly in light of the remaining challenges of class
12 certification, a potential writ of certiorari from the Supreme Court, summary
13 judgment, trial, and the inevitable post-trial motions and appeals. The Settlement
14 achieves a substantial, certain and immediate recovery for the Class and is superior
15 to the possibility that were the Litigation to proceed to trial, there could be no
16 recovery at all. Here, it is the considered judgment of highly experienced counsel
17 after extensive hard-fought litigation, substantial discovery, and settlement
18 negotiations that the Settlement is not only a very good result for the Class but
19 likely the best result under the circumstances and should be approved. As
20 discussed below, an analysis of the relevant factors demonstrates that the
21 Settlement merits this Court’s final approval.

22 **IV. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE,**
23 **AND ADEQUATE**

24 **A. The Settlement Enjoys a Presumption of Reasonableness**
25 **Because It Is the Product of Arm’s-Length Settlement**
26 **Negotiations**

27 “A presumption of correctness is said to ‘attach to a class settlement reached
28 in arm’s-length negotiations between experienced counsel after meaningful
discovery.’” *In re Heritage Bond Litig.*, 2005 WL 1594403, at *9 (C.D. Cal.

June 10, 2005); *see also* *Linney v. Cellular Alaska P'ship*, 1997 WL 450064, at *5 (N.D. Cal. July 18, 1997), *aff'd*, 151 F.3d 1234 (9th Cir. 1998) (“The involvement of experienced class action counsel and the fact that the settlement agreement was reached in arm’s length negotiations, after relevant discovery [has] taken place create a presumption that the agreement is fair.”). Further, the Ninth Circuit “put[s] a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution” in approving a class action settlement. *Rodriguez*, 563 F.3d at 965. This Settlement was reached after extensive pre-trial proceedings and arm’s-length negotiations by experienced counsel on both sides, each with a well-developed understanding of the strengths and weaknesses of each party’s respective claims and defenses, and under the supervision of an experienced mediator. Accordingly, the Settlement is entitled to a presumption of correctness and fairness.

As detailed in the Joint Declaration, the parties exchanged evidence-based mediation briefs and attended a full-day mediation with Gregory P. Lindstrom, Esq., of Phillips ADR, on May 9, 2018. Joint Decl., ¶¶81-83. While the parties negotiated in good faith at the mediation, they were unable to reach a resolution. *See id.*, ¶83. The following day, the parties accepted Mr. Lindstrom’s “double-blind” recommendation to resolve the Litigation for \$19 million. *Id.*, ¶84. Courts have recognized that “[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.” *See, e.g., Satchell v. Fed. Express Corp.*, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007).

Lead Counsel has many years of experience in litigating securities class actions and has negotiated hundreds of settlements of these types of cases, which settlements have been approved by courts across the country. *See, e.g.*, accompanying Declaration of Robert R. Henssler Jr. Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys’ Fees and Expenses (“Robbins Geller Decl.”), Ex. G; www.rgrdlaw.com; Declaration of Benjamin Galdston Filed on Behalf of Bernstein Litowitz Berger &

1 Grossmann LLP in Support of Application for Award of Attorneys’ Fees and
2 Expenses (“Bernstein Litowitz Decl.”), Ex. F; www.blbglaw.com. Defendants are
3 also represented by highly capable and experienced lawyers from Latham &
4 Watkins LLP who zealously represented their clients. The Settlement was reached
5 after arm’s-length negotiations by experienced counsel on both sides, each with a
6 well-developed understanding of each party’s respective claims and defenses.
7 These facts established that the Settlement is the result of hard-fought negotiations
8 and is “not the product of fraud or overreaching by, or collusion between, the
9 negotiating parties.” *Officers for Justice*, 688 F.2d at 625.

10 **B. The Amount of the Settlement Provides a Favorable**
11 **Recovery to the Class**

12 “In assessing the consideration obtained by the class members in a class
13 action settlement, ‘[i]t is the complete package taken as a whole, rather than the
14 individual component parts, that must be examined for overall fairness.’”
15 *DIRECTV*, 221 F.R.D. at 527 (quoting *Officers for Justice*, 688 F.2d at 628). “[I]t
16 is well-settled law that a proposed settlement may be acceptable even though it
17 amounts to only a fraction of the potential recovery that might be available to the
18 class members at trial.” *DIRECTV*, 221 F.R.D. at 527. “‘Naturally, the agreement
19 reached normally embodies a compromise; in exchange for the saving of cost and
20 elimination of risk, the parties each give up something they might have won had
21 they proceeded with litigation. . . .’” *Officers for Justice*, 688 F.2d at 624.

22 Here, the result achieved is substantial. The Class will receive \$19 million,
23 less Court-awarded fees and expenses and the costs of notice and administering the
24 Settlement. This recovery provides an immediate, tangible, and significant benefit
25 to the Class and eliminates the risk that the Class could recover less than the
26 Settlement Amount, or nothing at all, if the Litigation continued. Importantly, this
27 recovery far exceeds the median securities settlement as a percentage of estimated
28 damages. Specifically, the Settlement represents approximately 7%-13% of the

Class’ estimated recoverable damages as estimated by Lead Plaintiffs’ damages expert, and as much as 22% or more of such estimated damages when taking into account Defendants’ challenges to loss causation and materiality. These percentages greatly exceed the median settlement as a percentage of estimated damages in the Ninth Circuit of 2.2% from 2007 through 2016. *See* Laarni T. Bulan, Ellen M. Ryan & Laura E. Simmons, *Securities Class Action Settlements: 2016 Review and Analysis* at 23, Appendix 3 (Cornerstone Research 2017). And according to NERA, “the median ratio of settlements to NERA-defined Investor Losses was 2.6% in 2017.” Stefan Boettrich & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review* at 38 (NERA 2018).⁸ Courts may consider such data in evaluating a class action settlement. *See, e.g., Omnivision*, 559 F. Supp. 2d at 1042 (finding that settlement amount was reasonable in part because it was “higher than the median percentage of investor losses recovered in recent shareholder class action settlements”).

Had this Litigation proceeded, there was a real possibility that the Class would recover a smaller amount – or nothing at all after protracted litigation. In addition to the risk that Lead Plaintiffs could lose at class certification, summary judgment, or trial, continued litigation could include lengthy and costly appellate practice before the Supreme Court which could ultimately result in Lead Plaintiffs’ claims being significantly reduced or even extinguished. Accordingly, this factor weighs heavily in favor of the Settlement.

C. The Strength of Lead Plaintiffs’ Case, When Balanced Against the Risk, Expense, Complexity, and Likely Duration of Further Litigation, Supports Approval of the Settlement

In determining whether a proposed settlement is fair, reasonable, and adequate, the court should balance against the continuing risks of litigation, the

⁸ “NERA’s Investor Losses variable is a proxy for the aggregate amount that investors lost from buying the defendant’s stock, rather than investing in the broader market during the alleged class period.” *Id.* at 11.

1 benefits afforded to the class, and the immediacy and certainty of a substantial
2 recovery. *Johansson-Dohrmann v. CBR Sys.*, 2013 WL 3864341, at *4 (S.D. Cal.
3 July 24, 2013) (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th
4 Cir. 2000)). Securities actions pose unique risks and have “become more difficult
5 from a plaintiff’s perspective in the wake of the PSLRA.” *In re Ikon Office Sols.*,
6 *Inc.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000); *Bryant v. Avado Brands, Inc.*, 100
7 F. Supp. 2d 1368, 1377 (M.D. Ga. 2000) (“An unfortunate byproduct of the
8 PSLRA is that potentially meritorious suits will be short-circuited by the
9 heightened pleading standard.”), *rev’d on other grounds and remanded sub nom.*
10 *Bryant v. Dupree*, 252 F.3d 1161 (11th Cir. 2001).

11 Although Lead Plaintiffs survived Defendants’ attacks on the pleadings by
12 appealing to the Ninth Circuit, the pleadings remained at risk as Defendants’
13 certiorari petition was pending before the Supreme Court at the time the parties
14 reached agreement to settle. Moreover, had Lead Plaintiffs’ claims proceeded to
15 trial, Lead Plaintiffs faced serious obstacles to recovery, both with respect to
16 liability and damages. The claims asserted in the Litigation on behalf of the Class
17 were based on Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5
18 promulgated by the U.S. Securities and Exchange Commission. To prevail on their
19 Section 10(b) claims, Lead Plaintiffs bear the burden of proving: (a) a
20 misstatement or omission; (b) of material fact; (c) made with scienter; (d) on which
21 plaintiffs relied; and (e) that caused plaintiffs’ damages. *DSAM Global Value*
22 *Fund v. Altris Software*, 288 F.3d 385, 388 (9th Cir. 2002). Thus, Lead Plaintiffs
23 would have to prove that Defendants were responsible for material misstatements
24 or omissions of fact, that the Class relied on those statements, that Defendants
25 acted with the requisite scienter, and that the Class suffered damages as a result of
26 Defendants’ conduct.

27 While Lead Counsel believes that the claims have significant merit, it
28 recognizes that Lead Plaintiffs faced numerous risks and uncertainties. For

1 instance, adding to the difficulty of proving Lead Plaintiffs' claims was the fact
2 that the action was tied up on appeal during a significant period, during which the
3 PSLRA stay of discovery was in place. The memories of percipient witnesses,
4 including current and former QSI employees, likely faded over that time.
5 Moreover, Lead Counsel was well aware that many other similar actions lose on
6 dispositive motions, at trial, or on appeal. *See, e.g., Pompano Beach Police &*
7 *Firefighters' Ret. Sys. v. Las Vegas Sands Corp.*, 732 F. App'x 543, 547 (9th Cir.
8 2018) (affirming summary judgment in favor of defendants where plaintiffs failed
9 to establish loss causation); *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 395 (9th
10 Cir. 2010) (same). The Settlement recognizes the risks of complex litigation
11 involving difficult legal and factual issues. As discussed herein and in the Joint
12 Declaration, the risks of continued litigation, when weighed against the substantial
13 and certain recovery for the Class, confirms the reasonableness of the Settlement.

14 **1. The Risks of Proving Liability**

15 After nearly five years of litigation, including the review and analysis of
16 hundreds of thousands of pages of documents and conducting witness interviews,
17 Lead Plaintiffs believed that they had obtained substantial evidence supporting
18 their claims and that further discovery would uncover additional supporting
19 evidence. But, as discussed above and in the Joint Declaration, this Litigation
20 involves substantial risks in proving liability. Indeed, Defendants' arguments in
21 motion practice and settlement negotiations made it clear that the parties held
22 divergent views regarding the factual and legal issues presented, the evidence, and
23 the strengths and weakness of the parties' respective claims and defenses. Under
24 these circumstances, there was no guarantee that all claims would proceed to trial
25 and a jury would find in Lead Plaintiffs' favor. Lead Plaintiffs carefully
26 considered these and related risks during the settlement negotiations.

27 Even before settlement discussions commenced, it was very clear that
28 Defendants did not agree that Lead Plaintiffs would prevail on any of their claims,

1 particularly with respect to falsity and scienter, and there is no question that
2 Defendants would have raised every available argument to avoid an adverse
3 judgment had litigation continued. The defenses raised by Defendants certainly
4 had the possibility of success, making the ultimate outcome difficult to predict.

5 Defendants not only challenged the falsity and materiality of the alleged
6 misstatements and omissions, but they were also seeking a decision from the
7 Supreme Court that many of these alleged misstatements were in fact inactionable
8 as forward-looking statements protected by the PSLRA's safe harbor provisions.
9 Joint Decl., ¶¶50-51. In addition, at summary judgment, Defendants would likely
10 focus on alleged misstatements that the Ninth Circuit had not specifically
11 addressed and argue that these statements were inactionable. *Id.*, ¶89. While Lead
12 Counsel believes that the documents produced demonstrate the falsity of
13 Defendants' statements, Defendants' interpretation and understanding of those
14 documents is entirely different, and Lead Plaintiffs' success in establishing falsity
15 and materiality was certainly not guaranteed. *See id.*

16 Lead Plaintiffs also faced a significant challenge in establishing scienter, as
17 "[p]roving a defendant's state of mind is hard in any circumstances." *See In re*
18 *Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 579 (S.D.N.Y. 2008) (granting final
19 approval of \$5 million settlement). Lead Counsel believed that discovery had
20 revealed significant evidence of Defendants' scienter, but Defendants no doubt saw
21 things differently. Joint Decl., ¶90. Lead Plaintiffs would point to the
22 circumstances surrounding Defendant Plochocki's sale of QSI stock, including that
23 it was made near the high point of QSI's stock price and involved nearly all of his
24 holdings. *Id.* But Defendants would argue that this sale was not suspicious,
25 relying on the fact that Plochocki's only prior sale similarly liquidated around 97%
26 of his QSI holdings in 2008. *Id.*

27 The specific risks faced by Lead Plaintiffs would be exacerbated by the risks
28 inherent in all shareholder litigation, including the unpredictability of a lengthy and

1 complex jury trial, the risk that witnesses could be unavailable or simply not recall
2 critical facts or that jurors could react to the evidence in unforeseen ways, the risk
3 that a jury could find that some or all of the alleged misrepresentations were not
4 material, and the risk that the jury could find that Defendants believed in the
5 appropriateness of their actions at the time.

6 **2. The Risks of Proving Loss Causation and Damages**

7 Lead Plaintiffs also faced substantial risk in proving loss causation and
8 damages. *See In re Tyco Int'l, Ltd.*, 535 F. Supp. 2d 249, 260-61 (D.N.H. 2007)
9 (“Proving loss causation would be complex and difficult. Moreover, even if the
10 jury agreed to impose liability, the trial would likely involve a confusing ‘battle of
11 the experts’ over damages.”). In addition to proving falsity and scienter, in order
12 to prevail on their Section 10(b) claims, Lead Plaintiffs would be required to prove
13 that Defendants’ allegedly false and misleading statements and omissions inflated
14 the price of QSI stock and the amount of the artificial inflation.

15 Proving loss causation would require that Lead Plaintiffs overcome
16 Defendants’ inevitable arguments that the alleged corrective disclosures did not
17 reveal that the alleged misstatements were false or misleading, and that the decline
18 in QSI’s stock price was due to some other factor(s). Joint Decl., ¶¶91. If the Court
19 or jury accepted Defendants’ argument that other factors, as opposed to the alleged
20 corrective disclosures, had negatively impacted QSI’s stock price, the potential to
21 significantly decrease damages was very real. In addition to these arguments, Lead
22 Plaintiffs would also have to defeat Defendants’ likely *Daubert* challenges to Lead
23 Plaintiffs’ experts. *Id.*, ¶¶92. Defendants’ experts would likely attempt to
24 undermine the loss causation and damages assessments made by Lead Plaintiffs’
25 expert, leading to a costly, unpredictable, and potentially confusing “battle of the
26 experts.” *Id.*

27 The reaction of a jury to complex expert testimony is highly unpredictable,
28 and Lead Counsel recognizes the possibility that a jury could be swayed by

1 convincing experts for the Defendants, and find there were no damages or only a
2 fraction of the amount of damages asserted by Lead Plaintiffs. *See, e.g., In re*
3 *Warner Commc'ns Sec. Litig.*, 618 F.Supp. 735, 744-45 (S.D.N.Y. 1985)
4 (approving settlement where “it is virtually impossible to predict with any certainty
5 which testimony would be credited, and ultimately, which damages would be
6 found to have been caused by actionable, rather than the myriad nonactionable
7 factors such as general market conditions”), *aff'd*, 798 F.2d 35 (2d Cir. 1986); *In re*
8 *Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *10 (S.D.N.Y. Nov. 7,
9 2007) (“The jury’s verdict with respect to damages would depend on its reaction to
10 the complex testimony of experts, a reaction which at best is uncertain.”).

11 In the end, while Lead Counsel believes that reliable and convincing expert
12 testimony can be provided on the damages question, the meaningful and
13 substantial risks presented made the outcome of a trial extremely uncertain. As a
14 result, this factor also weighs in favor of the Settlement.

15 **3. The Risks of Defendants’ Pending Supreme Court** 16 **Petition**

17 Significantly, Lead Plaintiffs were not only facing the challenges of
18 successfully prosecuting this action through trial and post-trial motions and
19 appeals, but they were also facing Defendants’ petition for a writ of certiorari to
20 the Supreme Court. Joint Decl., ¶50. At the time of the Settlement, Defendants’
21 writ petition was completely briefed. *Id.*, ¶15. In their briefing, Defendants argued
22 the Ninth Circuit’s decision reversing dismissal of the Amended Complaint
23 announced a new, incorrect rule that only added to a conflict among the circuits
24 over the proper interpretation and application of the PSLRA’s safe harbor for
25 forward-looking statements. *Id.*, ¶¶50-51. Had the Supreme Court decided to
26 grant certiorari, this would not only have led to further delay but also would have
27 risked a severe decrease in the amount of any eventual recovery for the Class,
28 potentially to \$0. *See id.*, ¶86.

D. The Complexity, Expense, and Likely Duration of the Litigation Justifies the Settlement

The immediacy and certainty of a recovery is another factor for the Court to balance in determining whether this proposed Settlement is fair, adequate, and reasonable, as “[t]he expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement.” *Milstein v. Huck*, 600 F. Supp. 254, 267 (E.D.N.Y. 1984); *see also Officers for Justice*, 688 F.2d at 626. In other words,

[t]he Court shall consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect, “It has been held proper to take the bird in hand instead of a prospective flock in the bush.”

DIRECTV, 221 F.R.D. at 526.

As noted above, Defendants demonstrated a commitment to defend this case through and beyond trial, if necessary, and are represented by well-respected and highly capable counsel from Latham & Watkins LLP. If not for this Settlement, the expense and time of continued litigation would have been substantial. As the court noted in *Ikon*:

In the absence of a settlement, this matter will likely extend for . . . years longer with significant financial expenditures by both defendants and plaintiffs. This is partly due to the inherently complicated nature of large class actions alleging securities fraud: there are literally thousands of shareholders, and any trial on these claims would rely heavily on the development of a paper trial [sic] through numerous public and private documents.

194 F.R.D. at 179.

If this Litigation continued, Lead Plaintiffs’ motion for class certification and Defendants’ motions for summary judgment and motions to exclude Lead Plaintiffs’ experts’ testimony would have to be briefed and argued, proposed jury instructions would have to be submitted, and motions *in limine* would have to be filed and argued. Substantial time and expense would need to be incurred in preparing the case for trial. The trial itself would have been long, expensive, and

1 uncertain, and post-trial motions and appeals challenging the jury verdict would be
2 virtually assured. *See, e.g., Glickenhau & Co. v. Household Int'l, Inc.*, 787 F.3d
3 408 (7th Cir. 2015); *In re BankAtlantic Bancorp, Inc.*, 2011 WL 1585605, at *6
4 (S.D. Fla. Apr. 25, 2011). Separately, the Supreme Court could decide to grant
5 certiorari with lengthy and costly proceedings resulting. All of these events and
6 proceedings would add considerably to the expense and duration of the Litigation.

7 The legal issues presented are complex – proving scienter, causation, and
8 damages – and would involve expert testimony, as discussed above. The
9 Settlement will spare the litigants the significant delay, risk, and expense of
10 continued litigation. Many hours of the Court's time and resources also have been
11 spared. Moreover, even if the Class could recover a larger judgment after a trial,
12 the additional delay through trial, post-trial motions, and the appellate process
13 could deny any recovery for years and further reduce its value. The \$19 million
14 settlement, at this juncture, results in an immediate and substantial tangible
15 recovery, without the considerable risk, expense, and delay of summary judgment
16 motions, trial, and post-trial litigation.

17 **E. Lead Plaintiffs Had Sufficient Information to Determine the**
18 **Propriety of Settlement**

19 In reviewing a class action settlement, the Court may also consider the stage
20 of the proceedings and the discovery thus far completed. *See Officers for Justice*,
21 688 F.2d at 625; *Mego Fin.*, 213 F.3d at 458. Here, both the knowledge of Lead
22 Counsel and the proceedings themselves have reached a stage where an intelligent
23 evaluation of the strengths and weaknesses of Lead Plaintiffs' case and the
24 propriety of the Settlement could be made. As discussed above and in the Joint
25 Declaration, this Litigation has involved extensive discovery, including the
26 production of over 350,000 pages of documents. Joint Decl., ¶¶4, 59-76. The
27 parties also participated in extensive settlement negotiations, including an all-day,
28 face-to-face mediation session with Mr. Lindstrom in May 2018, where the parties'

1 claims and defenses were fully vetted. *Id.*, ¶83. Prior to the mediation, the parties
2 exchanged detailed mediation statements which further highlighted the factual and
3 legal issues in dispute. *Id.*, ¶¶81-82. As a result, Lead Counsel was able to assess
4 the strengths and weaknesses of the claims asserted and resolve the Litigation on a
5 highly favorable basis for the Class.

6 **F. The Recommendations of Experienced Counsel After**
7 **Extensive Litigation and Arm's-Length Settlement**
8 **Negotiations Favor the Approval of the Settlement**

9 As the Ninth Circuit observed in *Rodriguez*, “[t]his circuit has long deferred
10 to the private consensual decision of the parties” and their counsel in settling an
11 action. 563 F.3d at 965. Courts have recognized that “[g]reat weight” is
12 accorded to the recommendation of counsel, who are most closely acquainted with
13 the facts of the underlying litigation.” *DIRECTV*, 221 F.R.D. at 528; *accord*
14 *Omnivision*, 559 F. Supp. 2d at 1043 (“[t]he recommendations of plaintiffs’
counsel should be given a presumption of reasonableness”).

15 Lead Counsel has significant experience in securities and other complex
16 class action litigation and has negotiated numerous other substantial class action
17 settlements throughout the country. *See* www.rgrdlaw.com; www.blbglaw.com.
18 Having carefully considered and evaluated, *inter alia*, the relevant legal authorities
19 and evidence to support the claims asserted against Defendants, the likelihood of
20 prevailing on these claims, the risk, expense, and duration of continued litigation,
21 and the likely appeals and subsequent proceedings necessary if Lead Plaintiffs did
22 prevail against Defendants at trial, Lead Counsel has concluded that the Settlement
23 is a very good result for the Class. *See* Joint Decl., ¶¶6-7, 95, 99-100. Here,
24 “[t]here is nothing to counter the presumption that Lead Counsel’s
25 recommendation is reasonable.” *Omnivision*, 559 F. Supp. 2d at 1043.
26 Importantly, Lead Plaintiffs, who were active in the Litigation, authorized counsel
27 to settle it and support the reasonableness of the Settlement. *See* Cotera Decl., ¶4;
28 ATRS Decl., ¶4.

G. Reaction of the Class Supports Approval of the Settlement

Pursuant to the Notice Order, the Court-approved Notice was mailed to potential Class Members who could be identified with reasonable effort and a Summary Notice was published once in the national edition of *The Wall Street Journal* and over the *PR Newswire* on August 14, 2018. See Miller Decl., ¶¶9-10. These documents were also posted on the Settlement-specific website established by the Claims Administrator. *Id.*, ¶12. The Notice advised the Class of the terms of the Settlement and the Plan of Allocation as well as the procedure and deadline for filing objections. As of October 12, 2018, more than 61,200 Notices had been mailed to potential Class Members and nominees. *Id.*, ¶9. While the objection deadline, October 29, 2018, has not yet passed, not a single Class Member has filed an objection to the Settlement, the Plan of Allocation, or counsel's request for an award of attorneys' fees and expenses.⁹

While not conclusive, "the fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness." *Hanlon*, 150 F.3d at 1027. Of course, "[t]he fact that some class members object to the Settlement does not by itself prevent the court from approving the agreement." *Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 906 (S.D. Ohio 2001). "A certain number of . . . objections are to be expected in a class action." *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521, 533 (E.D. Ky. 2010), *aff'd sub nom. Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C.*, 636 F.3d 235 (6th Cir. 2011).

Each of the above factors fully supports a finding that the Settlement is fair, reasonable, and adequate, and therefore deserves this Court's final approval.

⁹ In accordance with the Notice Order, Lead Plaintiffs will respond to any objections on or before November 12, 2018.

1 **V. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE**

2 Lead Plaintiffs also seek approval of the Plan of Allocation. The Plan of
3 Allocation provides an equitable basis to allocate the Net Settlement Fund among
4 all Class Members who submit an acceptable Proof of Claim, and it is set forth in
5 full in the Notice mailed to potential Class Members.

6 Assessment of a plan of allocation of settlement proceeds in a class action
7 under Rule 23 of the Federal Rules of Civil Procedure is governed by the same
8 standards of review applicable to the settlement as a whole – the plan must be fair,
9 reasonable, and adequate. *Ikon*, 194 F.R.D. at 184; *see also Class Plaintiffs*, 955
10 F.2d at 1284-85. District courts enjoy “broad supervisory powers over the
11 administration of class-action settlements to allocate the proceeds among the claiming
12 class members . . . equitably.” *Beecher v. Able*, 575 F.2d 1010, 1016 (2d Cir. 1978);
13 *accord In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982).

14 Courts have concluded that “[i]t is reasonable to allocate the settlement
15 funds to class members based on the extent of their injuries or the strength of their
16 claims on the merits.” *See Omnivision*, 559 F. Supp. 2d at 1045; *Heritage Bond*,
17 2005 WL 1594403, at *11 (concluding as fair, a plan of allocation which ““makes
18 interclass distinctions based upon, *inter alia*, the relative strengths and weaknesses
19 of class members’ individual claims and the timing of purchases of the securities at
20 issue”). Here, the Plan of Allocation was developed by Lead Counsel with the
21 assistance of Lead Plaintiffs’ economic expert based on Lead Plaintiffs’ damages
22 theory. Joint Decl., ¶102. As a result, the Plan of Allocation will result in a fair
23 distribution of the available proceeds among Class Members who submit valid
24 claims and therefore should be approved. To date, there has been no objection to
25 the Plan of Allocation.

26 **VI. CONCLUSION**

27 The Settlement is a highly favorable result, given the presence of skilled
28 counsel for all parties, the extensive settlement negotiations, the considerable risk,

1 expense and delay if the Litigation were to continue, the certain and immediate
2 benefit of the Settlement to Members of the Class, and the lack of opposition
3 mounted by Class Members to date. In addition, the Plan of Allocation tracks the
4 theory of damages asserted in the case and is necessarily fair, reasonable, and
5 adequate. Therefore, Lead Plaintiffs respectfully request that this Court finally
6 approve the Settlement of this Litigation and the Plan of Allocation as fair,
7 reasonable, and adequate.

8 DATED: October 15, 2018

Respectfully submitted,

9 ROBBINS GELLER RUDMAN
10 & DOWD LLP

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Additional Counsel for Lead Plaintiff

CERTIFICATE PURSUANT TO LOCAL RULE 5-4.3.4

I, Robert R. Henssler Jr., am the ECF User whose identification and password are being used to file the Memorandum of Points and Authorities in Support of Lead Plaintiffs' Motion for Final Approval of Settlement and Approval of Plan of Allocation. In compliance with Local Rule 5-4.3.4(a)(2), I hereby attest that Benjamin Galdston has concurred in this filing.

DATED: October 15, 2018

s/ Robert R. Henssler Jr.
ROBERT R. HENSSLER JR.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on October 15, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Robert R. Henssler Jr.

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Mailing Information for a Case 8:13-cv-01818-CJC-JPR In re Quality Systems, Inc. Securities Litigation

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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